(1)

Supreme Court, U.S.
FILED

01 484 JUN 28 2001

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Gerard T. Goonan - PETITIONER PRO SE

vs.

Kenneth P. Kane, Gerald Kahn, Ann Rosenblatt, Robin Rosenblatt - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
FOLEY SQUARE
NEW YORK, NY 10007

PETITION FOR WRIT OF CERTIORARI

Gerard T. Goonan
93-13 112th Street
Richmond Hill, NY 11418

35 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the United States Court of appeals rule on a perfected appeal brief not currently before it?

2. Can the United States District Court Southern District of New York deny for review an amended complaint submitted before it in compliance to its own established rules and regulations?

3. Did the New York State Supreme Court, the New York State Supreme Court appellate first division, New York State Supreme Court of appeals Albany rule incessantly against it's own CPLRS, rules of appellate procedures, violate the 5 th and 14 th amendment rights of the Constitution of the United States of America of your petitioner with the full knowledge and consent of some its court offices in collusion and with full and deliberate knowledge of some of the defendants in this action?

PARTIES TO THE PROCEEDINGS

Respondent

Kenneth P. Kane
432 Park Avenue South
New York, NY 10040
(212) 689-0800

Respondent

Gerald Kahn
750 Lexington Avenue
11th Floor
New York, NY 10022
(212) 688-2400

Respondents

Anne and Robin Rosenblatt
4580 Broadway
New York NY 10040
(212) 567-7289

Petitioner

Gerard T. Goonan
93-13 112th Street
Richmond Hill, NY 11418

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BEST AVAILABLE COPY

OPINIONS BELOW

The United States District Court Southern District docket #00-CIV.3638 (M.B.M.) In an unpublished memoranda opinion dated May 15, 2000 chief judge Michael B. Mukasey ruled that the complaint submitted by your petitioner be dismissed for lack of subject matter.

The United States Court of Appeals for the second circuit docket #00-9087 ruled on February 21, 2001 that the appellants (your petitioner) motion to withdraw his appeal without prejudice from the court be denied and the appeal be dismissed as frivolous. The justices present were Hon. Thomas J. Meskill, Hon. Fred I. Parker, Hon. Robert A. Katzmann

The New York State Court of Appeals 1-11 Mo. No. 1127 ruled on November 18 th, 1999 present HON. JUDITH S. KAYE chief judge, presiding so ordered that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

The Appellate Division of the New York State Supreme Court for the first Judicial Department in the County of New York on July 15 th 1999 with the justices present Hon. Joseph P. Sullivan Justice Presiding Hon. Angela M. Mazzarelli, Richard W. Wallach, Alfred D. Lerner, John T. Buckley. Defendant-Appellant in connection with an appeal from a judgment of the Supreme Court, New York County, entered on or about July 25,

1996, having moved this Court in two separate motions for vacatur of the aforesaid judgment (M-3679) and for clarification (M-3680) of the prior order of this Court entered on April 27, 1999 (M-1798)., and for related relief.

The New York State Supreme Court New York County entered on or about July 25 th, 1996 a judgement in favor of Anne and Robin Rosenblatt against Gerard T. Goonan, the order was issued by Judge Ira Gammerman part 27.

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon, it is ordered that the motions be and the same hereby are denied.

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION

The United States Court of Appeals for the second circuit has ruled upon and cast an opinion upon a perfected appeal not presently before it at that time as being frivolous therefore depriving the appellee (your petitioner) his right of due process to re-file and amended complaint with the United States District Court Southern District of New York in accordance with rule 15(a) of the rules of civil procedure.

The date of the order sought to be reviewed was entered March 30, 2001 with the United States Court of Appeals before Hon. Thomas J. Meskill, Hon. Fred I. Parker, Hon. Robert A. Katzman, Circuit Judges which was my motion for reconsideration of the

withdrawal of my appeal without prejudice from the court of appeals which was based upon my motion to withdraw my appeal from the court of appeals without prejudice. The United States Court of Appeals for the second circuit ruled that the appeal be dismissed as frivolous. The circuit Judges present were Hon. Thomas J. Meskill, Hon. Fred I. Parker, Hon. Robert A. Katzmann. The ruling was made on February 21, 2001. This action of the United States Court of Appeals is non scopitory to its authority and is contrary to the rulings of other appeals court for the same type of case. The Appellate Courts action would certainly constitute a blatant violation of the petitioners Constitutional rights under the 5 th amendment of the Constitution of the United States of America as well as the equal protection clause of the 14 th Amendment of the Constitution of the United States of America. Therefore the tort of the Court of Appeals for the second circuit will certainly require the United States Supreme Courts supervisory power due to the above stated reasons, the United States Supreme Courts supervisory power to correct the torts of the United States Court of Appeals for the second circuit by reversing and vacating its erroneous ruling on the case which would allow your petitioner to file an amended complaint with the United States District Court in accordance with rule 15a of the federal rules of civil procedure.

Pursuant to rule 15(a) of the federal rules of civil procedure with clearly provides that "(a) party may amend the parties pleading once as a matter of course at any time before a responsive pleading is served". Non of the defendants had filed any answer at that time. The only input by Mr. Kane and Mr. Kahn was filed out of time of my motion to withdrawal my appeal from the court of appeals without prejudice from the court the return date of my motion was December 1, 2000.

Mr. Kahn notarized his reply on December 7 th, 2001 Mr. Kane notarized his reply on December 13 th 2001

CONSTITUTION AND STATUES INVOLVED

5th Amendment of the Constitution of the United States of America. No person shall be deprived of life, liberty or property without due process of law.

Fourteenth Amendment to the Constitution of the United States of America Clause V **EQUAL PROTECTION** note/1489 generally.

Denial of rights given by fourteenth Amendment can be by means other than legislation. Saunders v Shaw (1917) 244 US 317,61 L Ed 1163, 37 S Ct 638.

Equal protection clause does not require that state laws shall cover entire field of proper legislation in single enactment. Middleton v Texas Power & Light Co. (1919 249 US 152,63 L Ed 527, 39 S Ct 227.

Due protection of laws is pledge of protection of equal laws. Perley v North Carolina (1919) 249 US 510, 63 L Ed 735, 39 S Ct 357.

Equal protection of laws is pledge of protection of equal laws. Missouri ex rel. Gaines v Canada (1938) 305 US 337,83 L Ed 208, 59 S Ct. 232, reh den (1939) 305 US 676. 83 L Ed 437, 59 S Ct 356.

Equal protection of laws is right of individual, not merely of

group of individuals, or of body of persons according to their number. Mitchell v United States (1941) 313 US 80, 85 L Ed 1201, 61 S Ct 873.

Equal protection of laws is something more than abstract right, and is command which state must respect, benefits of which every person may demand. Hill v Texas (1942) 316 US 400, 86 L Ed 1559, 62 S CT 1159.

So long as law applies to all alike requirements of equal protection are met. Louisiana ex rel. Francis v Resweber (1947) 329 US 459.91 L Ed 422, 67 S Ct 374, reh den 1947 330 US 853.91 L Ed 1295, 67 S Ct 673.

Constitutional command for state to afford "equal protection of laws" sets goal not attainable by invention and application of precise formula. Kotch v Board of River Port Pilot Comm'rs (9147) 330 US 552, 91 L Ed 1093, 67 S Ct 910, reh den (1947) 331 US 864, 91 L Ed 1869, 67 S Ct 1196.

Federal Constitution requires that state treat those who deal with federal government as well as it treats those with whom it deals itself. Phillips Chemical

No state may effectively abdicate its responsibilities under equal protection clause of Fourteenth Amendment by either ignoring them or by merely failing to discharge them, whatever motive may be Burton v Wilmington Parking Authority (1961), 365 US 715 6L Ed 2d 45, 81 S Ct 856 criticized I Sceney v Kavitski (1995, ED Pa) 1995 US Dist. LEXIS 17962) and (criticized in Crescent Towing & Salvage Co. v Ormet Corp. (1998.La) 720 So 2d 628).

Equal protection clause of Fourteenth Amendment limits authority of state to draw such legal lines as it choose. Stanley v Illinois (1972) 405 US 645, 31 L Ed 2d 551, 92 S Ct 1208.

FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AMERICA

United States code annotated due process in general 2000 supplementary pamphlet covering years from 1998-1999 section 1 note-1491 generally.

Although state must generally provide due process before depriving citizen of property, when pre-deprivation process is impractical or impossible, availability of some meaningful post-deprivation remedy satisfies due process. Hanson v. Hancock County Memorial Hospital N. D. Iowa 1996, 938 F. Supp. 1419.

Where procedural due process violation is alleged, no constitutional violation takes place until state refuses to provide remedy. Sullivan Properties, Inc. v. City of Winter Springs, M.D. Fla. 1995,899 F. Supp.587.

Generally, party litigant is entitled todecision on facts by judge who hear matter, and deprivation of that right may be denial of due process. Schick v. Windsor Airmotive Division/Barnes Group, Inc., Conn. App. 1994,643 A2d 286, 34 Conn App. 673.

Court has no jurisdiction to grant relief beyond that sought in complaint, to grant such relief without notice and an opportunity to be heard denies procedural due process. Matter of Marriage of Leslie, Wash. 1989,772 P2d 1013, 112 Wash.2d 612.

It is failure of due process when government extends to aggrieved citizens certain rights and then make those rights a nullity by failing to provide a remedy. Ranger Fuel Corp. v. West Virginia Human Rights Com'n W.Val988,376 S.E.2d 154, 180 W.Va. 260, 78 A.L/R. 4th 253.

Rule 15 (a) of the federal rules of civil procedure which clearly provides that: "(a) party may amend the parties pleadings once as a matter of course at any time before a responsive pleading is served". Thus none of the defendants had filed an answer with the court, the plaintiff may file and serve one amended complaint without obtaining the courts permission.)

STATEMENT OF THE CASE

Kenneth P. Kane Esq. attorney for two of the other respondents Anne and Robin Rosenblatt is mentioned as respondents due to the following:

The above mentioned attorney for Anne and Robin Rosenblatt two of the above respondents in this action mailed to me your petitioner Gerard T. Goonan plaintiff in an action of summons and complaint to appear before the Supreme Court of the State of New York on September 18, 1995 at the New York County Court house, 60 Centre Street, New York, NY in room 130 at 9:30 a.m. in the aforenoon .

I Gerard T. Goonan in the entitled action know as index #119195/95 did so appear by order of the above mention attorney for the plaintiffs Anne and Robin Rosenblatt in that action.

The attorney Kenneth P. Kane nor any representative on behalf of the plaintiffs in that action did fail to appear for first and second calendar call constituting a default by all of the above mention parties and other representatives in this action.

I was informed by the New York State Supreme Court Administration at 60 Centre Street New York, NY in New York County that there was no case known as index #119195/95 on record anywhere in their system files.

This violation of court procedures was never acknowledge by any legal representative of or for the plaintiffs in this complaint.

The absence of the existence of any record of index#119195/95 was never acknowledge or explained by any official of the New York State Supreme Court or any of its administrative offices.

This can only have bee accomplished by the plaintiffs attorney Kenneth P. Kane with the full knowledge and consent of other offices of the New York State Supreme Court which is in violation to American Bar Association Rule 3.4 Fairness to Opposing Party and Counsel A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.

During the month of October 1995 I was served with another summons and complaint initiated by the plaintiffs Anne and Robin Rosenblatt by the person of Kenneth P. Kane Esq. attorney for the plaintiffs this time the return date was November 8th, 1995 and the index# was 119195/95 the return date was altered from September 18 th, 1995 by using white out to November 8 th, 1995 otherwise it appeared to be identical in all other respects and was passed off as the original complaint in all respects to myself the defendant in that case and to the New York State Supreme Court in violation of American Bar Association Rule 3.4 Fairness to Opposing Party and Counsel A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act. The first submission was totally stricken and disappeared from the courts records.

I the above mention defendant named in the above entitled action at the New York State Supreme Court did so appear on November 8 th, 1995 in the court house, 60 Centre Street, New York, NY .

On January 18 th 1996 the attorney of record for Anne and Robin Rosenblatt Kenneth P. Kane obtained a judgment order from judge Ira Gammerman a justice of the New York State Supreme Court for $398,577.00.

After January 18th, 1996 I was not properly notified by the plaintiffs attorney Kenneth P. Kane or any other representative for the plaintiffs or by way of any official of the New York State Supreme Court for further proceedings or appearances.

It is respectfully submitted that Kenneth P. Kane has not obtained any subsequent direction from the court for a leave to submit a later order certainly Mr. Kenneth P. Kane had waited well passed the requisite (60) days, indeed Mr. Kenneth P. Kane had waited approximately 9 months before his settling of his proposed order

GROSS LACHES

The attention of this honorable court also respectfully referred to the lower courts rule with regard to the submission of orders. 22NYCRR SECTION 202.48 clearly provides as follows:
202.48 Submission of Orders, Judgements and Decrees for Signature:

(a) Proposed orders or judgments with proof of service on all parties where the order is directed to be settled or submitted on notice, **must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing tha the order be settled or submitted**.

(b) **Failure to submit the order or judgement timely shall be deemed an abandonment of the motion or action, unless for good cause shown.**

(c) ..."

Emphasis supplied.

No notice of entry was ever served to me Gerard T. Goonan defendant in the New York State Supreme Court action known as 119195/95.

There has never been a notice of entry filed with the New York State Supreme Court in relationship to this case of the lower court known as index #119195/95 nor has the same been served upon my person by the attorneys of record in the above entitled action. Kenneth P. Kane for the lower court plaintiffs Anne and Robin Rosenblatt, nor the clerk nor any other representation of the New York State Supreme Court system has ever served upon my person a valid notice of entry.

Without a proper notice of entry served upon my person the defendant in the New York State Supreme Court action known as index#119195/95 by the court or any representative for the plaintiffs in this action I was unable to legally file my notice of appeal which is suppose to be filed within 30 days after a notice of entry has been entered and then served upon my person Gerard T. Goonan neither by representatives for the plaintiffs in this action nor the administration of the New York State Supreme Court system.

Any attorney in the State of New York is an officer of the New York State Supreme Court System and is therefore obligated to uphold all of its laws and statues .

Gerald Kahn Esq. was second attorney for the plaintiffs as a result of this action before the New York State Supreme Court know as Rosenblatt v. Goonan index#119195/95.

On December 5th, 1997 Gerald Kahn Esq. Informed your petitioner the defendant in this action known as index# 119195/95 entitled Rosenblatt v. Goonan that he was the new attorney of record for the Rosenblatts and that Kenneth P. Kane Esq. was being replaced on this case (as the thing was going no place)

Mr. Gerald Kahn never filed with the New York State Supreme Court System any indication that he was the new attorney of record although he relayed to me your petitioner that he was the new attorney of record.

Mr. Kenneth P. Kane Esq. never informed the New York State Supreme Court System that he had been relieved as attorney of record in favor of Gerald Kahn Esq.

Therefore Gerald Kahn Esq. was subsequently and properly served with my four motions and one order to show cause compelling appearances before the New York State Supreme Court System on February 24 th, 1998.

My four motions and one order to show cause with proof of service were known as 003- to uphold my motion to withdraw my stipulation for the payment of the plaintiff attorneys fees. 004-motion to reinstate to the court calendar the case known as Rosenblatt versus Goonan Index#119195/95 005-upholding my motion to vacate a

summary judgement against me in the amount of $398,577.00 006-006 motion for the return of my illegally seized Canadian coins of a value of $85,000 seized by Anne Rosenblatt 006-my order to show cause

The above mention 4 motions mentioned are the legal responsibility of Gerald Kahn Esq. as he informed me on December 5th, 1997 that he was the new attorney of record for the plaintiffs the Rosenblatts replacing Kenneth P. Kane Esq.

Gerald Kahn Esq. is in default of all the 4 motions as he did not respond as his responsibility called for as the new attorney of record.

On February 24th, 1998 Mr. Gerald Kahn Esq. was not at calendar call nor was any representative for the plaintiffs and calendar call in room 130 New York State Supreme Court house at 60 Centre Street the call # was 33

The administration the New York State Supreme Court had informed me that the case had been unilaterally adjourned until March 10th, 1998 by Mr. Kahn

On March 10th 1998 I appeared in room 130 at the New York State Supreme Court at the Court house at 60 Centre Street and was informed by the New York State Supreme Court System that the case had been unilaterally adjourned until March 16th 1998 by Mr. Kahn.

On March 16th 1998 I so appeared and so did Mr. Kahn at the court of Judge Ira Gammerman part 27 at 4:00 p.m. without any reply to any of my four motions and one order to show cause and he is therefore in default.

Also in appearance was Kenneth P. Kane Esq. claiming that

he was the actual attorney of record and that all legal correspondence was his responsibility, and that all of the four motions and one order to show cause was not properly served on him.

Kenneth P. Kane never acknowledge that he had been relieved as the attorney of record of this case and did not inform the court of his reinstatement to this case.

Therefore Judge Ira Gammerman dismissed all of my four motions and one order to show cause. On March 16, 1998 Kenneth P. Kane offered for the plaintiffs in index # 191195/95 in open court and into the record my illegally seized canadian coins of a value of $85,000 for ransom for their return to me my illegally seized property if I would pay to Anne and Robin Rosenblatt half of their declared value.

On January 21 st, 1999 Gerald Kahn Esq. sent a letter to Kenneth P. Kane Esq. informing him he is no longer in the case.

Both the respondents Kenneth P. Kane and Gerald Kahn are also in violation of American Bar Association Rule 3.4 due to their conduct in the course of the lower court proceedings

Due to the apparent collusion with the two above mentioned attorneys of record and offices of the New York State Supreme Court System with aid of fellow offices of the New York State Supreme Court System I w deprived of my rights of due process and property under the law and my unalienable rights as provided me under the 5th amendment of the United States Constitution and my unalienable rights under the 14 th amendment of the Constitution of the United States of America were violated. (Clause V-note-1489 as well as my rights

guaranteed me under the 14 th Amendment of the United States Constitution, the United States Code annotated due process in general 2,000 supplementary pamphlet covering the years 1998-1999 section one - Note 1491generally

Anne and Robin Rosenblatt are respondents in this action due to the fact Anne Rosenblatt illegally seized a stock of my Canadian coins on or about November 1994 without due process of law of any kind therefore violating my unalienable rights under the 5 th amendment of the Constitution of the United States of America which clearly provides no person shall be deprived of life, liberty, or property without due process of law and they were under the control of Anne Rosenblatt and Robin Rosenblatt under their dual possession.

Judge Ira Gammerman issued an order from the bench to the above entitled respondents to retain my coins on January 18 th, 1996 although the coins were seized by them illegally without the benefit of due process of any kind in all of the lower courts. This action was in clear violation of my unalienable right guaranteed me your petitioner Gerard T. Goonan under the 5 th and 14 th Amendment of the Constitution of the United States of America clause V-note 1489, The United States Code annotated due process in general 2000 supplementary pamphlet covering the years 1998-1999 section one - Note 1491 generally.

The value of my stock of illegally seized Canadian coins was approximately $85,000

I filed a motion with the lower courts for the proper return of my illegally seized Canadian coins. My motion known as 006-006 was ignored by all of the lower courts in violation to my unalienable Constitutional rights guaranteed me under the 5th and 14 th Amendments of the Constitution of the United States of America (Clause V-note 1489. The United States Code annotated due process in general 2000 supplementary pamphlet covering the years 1998-1999 section one - Note 1491 generally.

The Appellate Court first division of the New York State Supreme Court, and the New York State Court of Appeals in Albany upheld the decisions of the lower courts ruling. The ruling was SUA SPONTE to all of my submissions presented in evidence to them for their review.

Due to the conduct of the two respondents Kenneth P. Kane and Gerald Kahn and their actions in the New York State Supreme Court system it would be totally beyond the scope of reason or reality to expect a fair and impartial further dealing with the New York State Supreme Courts in this matter therefore I am requesting the United States Supreme Court supervisory power to correct the torts of the lower courts and the United States Court of Appeals by reversing its erroneous decision in this case and allow your petitioner to file an amended complaint with the United States District Court in accordance with rule 15 (a) of the federal rules of civil procedure.

All of the herein aforementioned it accurate and true to the best of my knowledge and belief.

Queens
New York
Dated September 11th 2001
State of New York
County of Queens

Respectfully submitted,

Gerard T. Goonan (Pro Se)
93-13 112th Street
Richmond Hill, NY 11418

FRED C. THOMSON
Notary Public, State of New York
No. 01TH4755622
Qualified in Queens County
Commission Expires March 30, 20 02

REASONS RELIED UPON FOR ALLOWANCE OF THIS WRIT

I the petitioner for this writ hereby request judicial relief from the United States Supreme Court by granting my petition for a writ of certiorari due to the fact that the United States Court of Appeals was erroneous in its decision to dismiss my appeal as frivolous when there was no written perfected appeal brief before it to review. The docket No. was 00-9087. The relief I requested from the United States Court of Appeals was that to simply withdraw my right of appeal from the United States Court of Appeals without prejudice from that court to pursue my filing of my amended complaint as is my right with the United States District Court Southern District of New York as is provided for in rule 15 (a) of the federal rules of civil procedure which clearly provides that: "(a) party may amend the parties pleadings once as a matter of course at any time

before a responsive pleading is served". Thus none of the defendants had filed an answer with the court, the plaintiff may file and serve one amended complaint without obtaining the courts permission.) Two of the defendants filed a brief in opposition to my motion for reconsideration for the withdrawal of my appeal without prejudice from the United States Court of Appeals after the return date of December 1, 2000 out of time. Mr. Kahn notarized his reply on December 7, 2000, Mr. Kane notarized his reply on December 13, 2000.

The appellate courts decision is a tort of that court and would set a negative precedent that in essence would vacate and rescind the valid structure of established law that has gone before it and proceeding it therefore I request the United States Supreme Courts supervisory power to correct the torts of the United States Court of Appeals by reversing its erroneous decision in this case and allow me to file my amended complaint with the United States District Court in accordance with rule 15 (a) of the federal rules of civil procedure.

Queens
New York
Date September 4TH 2001
STATE OF NEW YORK
COUNTY OF QUEENS

Respectfully submitted,

Gerard T. Goonan (Pro Se)
93-13 112th Street
Richmond Hill, NY 11418

FRED C. THOMSON
Notary Public, State of New York
No. 01TH4755622
Qualified in Queens County
Commission Expires March 30, 20 02

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

00-9087
Docket Number

Motion for
Reconsideration for the
withdrawal of my appeals
without prejudice from the
court of appeals

GERARD T. GOONAN PLAINTIFF - APPELLANT
VS ANNE AND ROBIN ROSENBLATT
KENNETH P. KANE, GERALD KAHN

DEFENDANTS-APPELLEES

Gerard T. Goonan - Pro se
Motion by:
93-13 112 th Street, Richmond Hill, New York, 11418
Has consent of opposing counsel:

A. Been sought? No
B. Been obtained? No

Has service been effected? Yes
Is oral argument desired? No

Requested return date: March 16 th 2001

Has argument date of appeal been set:
A. By scheduling order? Yes
B. By firm date/argument notice? No

Judge or agency whose order is being appealed:
S.D.N.Y. 00-CIV-3638 - MUKASEY, C.J.

By: Gerard T. Goonan (signature)
Signed name must be printed beneath
Gerard T. Goonan
Date: March 5 th, 2001

ORDER

Before: Hon. Thomas J. Meskill, Hon. Fred I. Parker, Hon. Robert A. Katzmann, Circuit Judges

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK
by

Arthur M. Heller
Administrative Attorney

UNITED STATES COURT OF APPEALS
FILED MARCH 30 2001
ROSEANN B. MACKECHNIE
SECOND CIRCUIT

March 30th 2001
Date

UNITED STATES COURT OF APPEALS
for the SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courhouse, Foley Square, in the City of New York, on the 21 st day of February two thousand and one, Present: Hon. Thomas J. Meskill, Hon. Fred I. Parker, Hon. Robert A. Katzmann, Circuit Judges

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UNITED STATES COURT OF APPEALS
FILED FEB. 21 2001
Roseann B. MacKechnie, Clerk Second Circuit

Gerald T. Goonan,

Plaintiff-Appellant,

v. 00-9087

Anne and Robin Rosenblatt, Kenneth P. Kane, Esq., and Gerald Kahn, Esq.,

Defendants-Appellees.

Appellant has moved to withdraw his appeal without prejudice. Upon due consideration, it is ORDERED that the motion is denied. The appeal is dismissed as frivolous. See Pillay v INS, 45 F.3d 14, 17 (2d Cir. 1995) (appeals court has "inherent authority...to dismiss an appeal as frivolous when ...[it] presents no arguably meritorious issue for...consideration")

FOR THE COURT:
Roseann B. Mackechnie, Clerk
By Lucille Carr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD T. GOONAN,

Plaintiff

CIVIL JUDGMENT

-v-

ANNE AND ROBIN ROSENBLATT, KENNETH P. KANE, ESQ. AND GERALD KAHN, ESQ.

Defendants

Pursuant to the order issued May 15 2000 by the Honorable Michael B. Mukasey, Chief Judge, dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED: That the complaint is hereby dismissed for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1) and 12(h)(3). I certify pursuant to 28 U.S.C. section 1915(a)(3) that any appeal from the Court's order would not be taken in good faith.

May 15 2000

S/_____
MICHAEL B.MUKASEY
Chief Judge

Dated: New York, New York

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON _____.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD T. GOONAN,

Plaintiff

ORDER OF DISMISSAL

ANNE AND ROBIN ROSENBLATT, KENNETH P. KANE, ESQ. AND GERALD KAHN, ESQ.

Defendants

Plaintiff, proceeding pro se, brings this action alleging his constitutional rights were violated by defendants. Although plaintiff paid the requisite filing fee to bring this action, his complaint must be dismissed for the following reason.

The subject matter jurisdiction of the federal district courts is limited and is set forth generally in 28 U.S.C. section section 1331 and 1332. Under these statutes, federal jurisdiction is available only when a "federal question" is presented (section 1331) or plaintiff and defendant are of diverse citizenship and the amount in question exceeds $75,000. (section 1332). "[I]t is common ground that in our federal system of limited jurisdiction any party or the court *sua sponte*, at any stage of the proceedings, may raise the question of whether the court has subject matter jurisdiction." United Food & Commercial Workers Union, Local 919, AFL-CIO v. Center Mark Properties Meriden Square, Inc., 30 F.3d 298,301(2d Cir. 1994) (quoting Manway Constr. Co. V Housing Auth. of Hartford, 711 F.2d 501, 503 (2d Cir. 1983). Moreover, "[w]here jurisdiction is lacking,...dismissal is mandatory." Id., see also Fed. R. Civ. P. 12 (b)(1) and 12 (h)(3).

Plaintiffs claim does not provide a basis for federal jurisdiction under 28 U.S.C. section 1331. To invoke federal question jurisdiction, the plaintiffs' claims(s) must arise "under the Constitution, laws, or treaties of the United States." 28 U.S.C. section 1331. "Federal question jurisdiction may be properly invoked only if the plaintiff's complaint necessarily draws into question the interpretation or application of federal law." State of New York v. White, 528 F.2d336,338 (2d Cir. 1975).

The complaint and attached exhibits demonstrate that plaintiff was sued in Supreme Court of the State of New York by Anne and Robin Rosenblatt, who were represented by Gerald Kahn and then by Kenneth Kane. The Supreme Court action was brought for payment of two promissory notes. Plaintiff alleges the conduct of the case in the Supreme Court violated his constitutional rights. Specifically plaintiff

alleges he was served with two summonses which he alleges "would certainly constitute double jeopardy against me in violation of the fifth amendment of the constitution of the United States of America." Complaint 4. These allegations are insufficient to confer federal jurisdiction. Anderson v. Bowen, 881 F.2d 1, 5 n.10 (2dcir. 1989) (quoting Hagans v Lavine, 415 U.S. 528, 536-37 (1974).

For plaintiff's benefit, I write to explain that civil rights claims must allege facts showing that the defendants acted under color of a state "statute, ordinance, regulation, custom or usage..." and private parties are not generally liable. Rendell-Baker v. Kohn, 457 U.S. 830,838-42 (1982); Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155-57 (1978); Moose Lodge No. 107 v Irvis, 407 U.S. 163, 173 (1972); Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970). That defendants' actions complained of occurred within a proceeding brought in State Supreme Court does not confer state action status on defendants. Plaintiff may pursue whatever remedies he has under stated law to vindicate his rights. He may not bring a federal court action to overturn a state court action.

Federal jurisdiction is also unavailable under 28 U.S.C. section 1332 because diversity of citizenship is not alleged to exist between plaintiff and the defendants. Cresswell v Sullivan & Cromwell, 922 F.2d 60, 68 (2d Cir. 1990) ("It is well established that for a case to come within this statute there must be complete diversity and that diversity is not complete if any plaintiff is a citizen of the same state as any defendant.") (citations omitted).

Thus, according this pro se complaint the close and sympathetic reading to which it is entitled, Haines v. Kerner, 404 U.S. 519, 520-21 (per curiam), reh'gdenied, 405 U.S. 948 (1972), it reveals no basis for the exercise of subject matter jurisdiction over plaintiff's suit. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215,231 (1990) (the Court has an independent duty to examine the basis for jurisdiction); fed. R. Civ.P. 12 (h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

Accordingly, the complaint is dismissed for lack of subject matter jurisdiction. Fed. R. Civ.P. 12 (b)(1) and 12 (h)(3). I certify under 28 U.S.C. section 1915(a) that any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S.438,444-45 (1962).

SO ORDERED

S/_____
MICHAEL B. MUKASEY
Chief Judge

May 15 2000
Dated: New York, New York

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eighteenth day of November 1999

PRESENT, HON. JUDITH S. KAYE, chief Judge, presiding.

1-11 Mo. No. 1127
Anne Rosenblatt et al.,
Respondents,

v.

Gerard T. Goonan.

Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

S/_____

Stuart M. Cohen
Clerk of the Court

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on July 15, 1999

Present - Hon. Joseph P. Sullivan, Justice Presiding
Angela M. Mazzarelli
Richard W. Wallach
Alfred D. Lerner
John T. Buckley, Justices.

_____X

Ann Rosenblatt and Robin Rosenblatt,

Plaintiffs-Respondents,

-against-

M-3679
M-3680
Index
#119195/95

Gerad T. Goonan,

Defendant-Appellant.

_____X

Defendant-appellant, in connection with an appeal from a judgment of the Supreme Court, New York County, entered on or about July 25, 1996, having moved this Court in two separate motions for vacatur of the aforesaid judgment (M-3679) and for clarification (M-3680) of the prior order of this Court entered on April 27, 1999 (M-1798), and for related relief.

Now, upon reading and filing the papers with respect to the motions, and due deliberation having been had thereon,

It is ordered that the motions be and the same hereby are denied.

ENTER:

S/
Catherine O'hagan Wolfe
Clerk.

State of New York
Court of Appeals

Stuart M. Cohen
Clerk of the Court

Clerk's Office
Albany,
New York 12207-1095

DECISION November 18, 1999

1-11 Mo. No. 1127
Anne Rosenblatt et. al.,
Respondents

v.

Gerard T. Goonan, Apellant.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

State of New York
Court of Appeals

Stuart M. Cohen
Clerk of the Court

Clerk's Office
Albany,
New York 12207-1095

DECISION February 22, 2000

1-11 Mo. No. 32

Motion for clarification and/or re-argument denied

Anne Rosenblatt et al.,
Gerard T. Goonan

Appellant.